

IN THE SENATE

SENATE BILL NO. 1265

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

RELATING TO AIRPORT ZONING; AMENDING SECTION 21-503, IDAHO CODE, TO PROVIDE THAT POLITICAL SUBDIVISIONS HAVE THE POWER TO ADOPT REGULATIONS, TO REVISE TERMINOLOGY, TO REVISE A CODE REFERENCE, TO REMOVE PROVISIONS RELATING TO THE METHOD OF ADOPTING ZONING REGULATIONS, TO REMOVE A PROVISION RELATING TO ZONING AVIATION HAZARD AREAS ADJACENT TO AN AIRPORT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6502, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE THAT PUBLIC AIRPORTS ARE ESSENTIAL COMMUNITY FACILITIES; AMENDING SECTION 67-6508, IDAHO CODE, TO PROVIDE FOR PUBLIC AIRPORT FACILITIES IN THE PLANNING DUTIES OF A PLANNING AND ZONING COMMISSION; AMENDING SECTION 67-6509, IDAHO CODE, TO PROVIDE THAT NOTICE OF INTENT TO AMEND A ZONING PLAN SHALL BE SENT TO THE MANAGER OF A LOCAL AIRPORT; AMENDING SECTION 67-6512, IDAHO CODE, TO PROVIDE THAT A STUDY OF AVIATION HAZARDS MAY BE REQUIRED FOR A SPECIAL USE PERMIT; AMENDING SECTION 67-6515A, IDAHO CODE, TO PROVIDE FOR NOTICE AND HEARING IN THE TRANSFER OF DEVELOPMENT RIGHTS AND TO PROVIDE THAT AVIATION HAZARDS SHALL BE AVOIDED IN THE TRANSFER OF DEVELOPMENT RIGHTS; AND AMENDING SECTION 67-6516, IDAHO CODE, TO PROVIDE FOR NOTICE AND HEARING IN THE CONSIDERATION OF VARIANCE PERMITS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 21-503, Idaho Code, be, and the same is hereby amended to read as follows:

21-503. AIRPORT ZONING REGULATIONS. (1) Power to Adopt Regulations. In order to prevent the creation or establishment of aviation hazards, political subdivisions of the state of Idaho, by and through the Idaho transportation department, may having zoning ordinance authority are empowered to adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for aviation hazard areas within the state, which regulations may divide such areas into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Method of Adopting Zoning Regulations. The department Political subdivisions having zoning ordinance authority shall promulgate and adopt in the manner and in conformance with the procedure set forth in this chapter 65, title 67, Idaho Code, such reasonable regulations for the zoning of airports, aviation hazard areas and aviation hazards within the state their jurisdiction as may be reasonably necessary to accomplish the highest degree of safety for airflight operations. Prior to adopting any zoning regulations:

(a) The director Political subdivisions having zoning ordinance authority shall cause to be prepared a map or maps, as the individual

1 situation may require, for each airport, and surrounding aviation
 2 hazard area to be zoned. Such map shall contain a description of the
 3 exterior boundaries of the area to be included within the zoning regula-
 4 tions, and the boundaries and runways of the airport and shall disclose
 5 the existing and any planned approaches to the subject airport, the
 6 proposed glide angles and restricted areas deemed necessary by the
 7 director, and such other information as may be deemed helpful by the
 8 director political subdivision to fairly portray the areas involved and
 9 the airspace required.

10 (b) The director political subdivision shall also cause to be prepared
 11 proposed regulations setting forth the various zones within the area
 12 and the restrictions applicable to each. Zones may be named or numbered
 13 or otherwise designated to distinguish one zone from another.

14 ~~(c) Such proposed regulations and the map or maps of the area involved~~
 15 ~~shall be filed with the county recorder of the county or counties in~~
 16 ~~which the airport or any part thereof is situated.~~

17 ~~(d) To amend any adopted zoning regulations the director shall proceed~~
 18 ~~in the same manner set forth for the adoption of regulations except that~~
 19 ~~he need only give notice and file maps and regulations that relate to the~~
 20 ~~particular amendment to be made.~~

21 ~~Upon the approval and designation of any airport in this state the de-~~
 22 ~~partment may immediately thereafter take such steps necessary under this~~
 23 ~~chapter to zone the aviation hazard area adjacent to such airport and the~~
 24 ~~department shall, if requested by the owners of any existing airport which~~
 25 ~~has heretofore been approved and designated and which is open to public use,~~
 26 ~~take such steps necessary under this chapter to zone the aviation hazard area~~
 27 ~~adjacent to such airport, or the director may proceed to zone any such area~~
 28 ~~without such a request.~~

29 SECTION 2. That Section 67-6502, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 67-6502. PURPOSE. The purpose of this act shall be to promote the
 32 health, safety and general welfare of the people of the state of Idaho as
 33 follows:

34 (a) To protect property rights while making accommodations for other
 35 necessary types of development such as low-cost housing and mobile home
 36 parks.

37 (b) To ensure that adequate public facilities and services are provided
 38 to the people at reasonable cost.

39 (c) To ensure that the economy of the state and localities is protected.

40 (d) To ensure that the important environmental features of the state
 41 and localities are protected.

42 (e) To encourage the protection of prime agricultural, forestry and
 43 mining lands and land uses for production of food, ~~fi~~bre fiber and minerals,
 44 as well as the economic benefits they provide to the community.

45 (f) To encourage urban and urban-type development within incorporated
 46 cities.

47 (g) To avoid undue concentration of population and overcrowding of
 48 land.

1 (h) To ensure that the development on land is commensurate with the
2 physical characteristics of the land.

3 (i) To protect life and property in areas subject to natural hazards and
4 disasters.

5 (j) To protect fish, wildlife and recreation resources.

6 (k) To avoid undue water and air pollution.

7 (l) To allow local school districts to participate in the community
8 planning and development process so as to address public school needs and
9 impacts on an ongoing basis.

10 (m) To protect public airports as essential community facilities that
11 provide safe transportation alternatives and contribute to the economy of
12 the state.

13 SECTION 3. That Section 67-6508, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 67-6508. PLANNING DUTIES. It shall be the duty of the planning or plan-
16 ning and zoning commission to conduct a comprehensive planning process de-
17 signed to prepare, implement, and review and update a comprehensive plan,
18 hereafter referred to as the plan. The plan shall include all land within the
19 jurisdiction of the governing board. The plan shall consider previous and
20 existing conditions, trends, compatibility of land uses, desirable goals
21 and objectives, or desirable future situations for each planning component.
22 The plan with maps, charts, and reports shall be based on the following com-
23 ponents as they may apply to land use regulations and actions unless the plan
24 specifies reasons why a particular component is unneeded.

25 (a) Property Rights -- An analysis of provisions which may be necessary
26 to ensure that land use policies, restrictions, conditions and fees do not
27 violate private property rights, adversely impact property values or cre-
28 ate unnecessary technical limitations on the use of property and analysis as
29 prescribed under the declarations of purpose in chapter 80, title 67, Idaho
30 Code.

31 (b) Population -- A population analysis of past, present, and future
32 trends in population including such characteristics as total population,
33 age, sex, and income.

34 (c) School Facilities and Transportation -- An analysis of public
35 school capacity and transportation considerations associated with future
36 development.

37 (d) Economic Development -- An analysis of the economic base of the area
38 including employment, industries, economies, jobs, and income levels.

39 (e) Land Use -- An analysis of natural land types, existing land covers
40 and uses, and the intrinsic suitability of lands for uses such as agricul-
41 ture, forestry, mineral exploration and extraction, preservation, recre-
42 ation, housing, commerce, industry, and public facilities. A map shall be
43 prepared indicating suitable projected land uses for the jurisdiction.

44 (f) Natural Resources -- An analysis of the uses of rivers and other wa-
45 ters, forests, range, soils, harbors, fisheries, wildlife, minerals, ther-
46 mal waters, beaches, watersheds, and shorelines.

47 (g) Hazardous Areas -- An analysis of known hazards as may result from
48 susceptibility to surface ruptures from faulting, ground shaking, ground
49 failure, landslides or mudslides; avalanche hazards resulting from de-

1 velopment in the known or probable path of snowslides and avalanches, and
2 floodplain hazards.

3 (h) Public Services, Facilities, and Utilities -- An analysis showing
4 general plans for sewage, drainage, power plant sites, utility transmission
5 corridors, water supply, fire stations and fire fighting equipment, health
6 and welfare facilities, libraries, solid waste disposal sites, schools,
7 public safety facilities and related services. The plan may also show loca-
8 tions of civic centers and public buildings.

9 (i) Transportation -- An analysis, prepared in coordination with
10 the local jurisdiction(s) having authority over the public highways and
11 streets, showing the general locations and widths of a system of major traf-
12 fic thoroughfares and other traffic ways, and of streets and the recommended
13 treatment thereof. This component may also make recommendations on build-
14 ing line setbacks, control of access, street naming and numbering, and a
15 proposed system of public or other transit lines and related facilities
16 including rights-of-way, terminals, future corridors, viaducts and grade
17 separations. The component may also include port, harbor, ~~aviation~~, and
18 other related transportation facilities.

19 (j) Recreation -- An analysis showing a system of recreation areas, in-
20 cluding parks, parkways, trailways, river bank greenbelts, beaches, play-
21 grounds, and other recreation areas and programs.

22 (k) Special Areas or Sites -- An analysis of areas, sites, or struc-
23 tures of historical, archeological, architectural, ecological, wildlife,
24 or scenic significance.

25 (l) Housing -- An analysis of housing conditions and needs; plans for
26 improvement of housing standards; and plans for the provision of safe, san-
27 itary, and adequate housing, including the provision for low-cost conven-
28 tional housing, the siting of manufactured housing and mobile homes in sub-
29 divisions and parks and on individual lots which are sufficient to maintain
30 a competitive market for each of those housing types and to address the needs
31 of the community.

32 (m) Community Design -- An analysis of needs for governing landscaping,
33 building design, tree planting, signs, and suggested patterns and standards
34 for community design, development, and beautification.

35 (n) Agriculture -- An analysis of the agricultural base of the area in-
36 cluding agricultural lands, farming activities, farming-related businesses
37 and the role of agriculture and agricultural uses in the community.

38 (o) Implementation -- An analysis to determine actions, programs, bud-
39 gets, ordinances, or other methods including scheduling of public expendi-
40 tures to provide for the timely execution of the various components of the
41 plan.

42 (p) National Interest Electric Transmission Corridors -- After noti-
43 fication by the public utilities commission concerning the likelihood of
44 a federally designated national interest electric transmission corridor,
45 prepare an analysis showing the existing location and possible routing
46 of high voltage transmission lines, including national interest electric
47 transmission corridors based upon the United States department of energy's
48 most recent national electric transmission congestion study pursuant to
49 sections 368 and 1221 of the energy policy act of 2005. "High-voltage trans-
50 mission lines" means lines with a capacity of one hundred fifteen thousand

1 (115,000) volts or more supported by structures of forty (40) feet or more in
2 height.

3 (q) Public Airport Facilities -- An analysis prepared with assistance
4 from the Idaho transportation department division of aeronautics, if re-
5 quested by the planning and zoning commission, and the manager or person in
6 charge of the local public airport identifying, but not limited to, facility
7 locations, the scope and type of airport operations, existing and future
8 planned airport development and infrastructure needs, and the economic im-
9 pact to the community.

10 Nothing herein shall preclude the consideration of additional planning
11 components or subject matter.

12 SECTION 4. That Section 67-6509, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE
15 PLAN. (a) The planning or planning and zoning commission, prior to recom-
16 mending the plan, amendment, or repeal of the plan to the governing board,
17 shall conduct at least one (1) public hearing in which interested persons
18 shall have an opportunity to be heard. At least fifteen (15) days prior to
19 the hearing, notice of the time and place and a summary of the plan to be
20 discussed shall be published in the official newspaper or paper of general
21 circulation within the jurisdiction. The commission shall also make avail-
22 able a notice to other papers, radio and television stations serving the
23 jurisdiction for use as a public service announcement. Notice of intent to
24 adopt, repeal or amend the plan shall be sent to all political subdivisions
25 providing services within the planning jurisdiction, including school dis-
26 tricts and the manager or person in charge of the local public airport, at
27 least fifteen (15) days prior to the public hearing scheduled by the com-
28 mission. Following the commission hearing, if the commission recommends a
29 material change to the proposed amendment to the plan which was considered at
30 the hearing, it shall give notice of its proposed recommendation and conduct
31 another public hearing concerning the matter if the governing board will
32 not conduct a subsequent public hearing concerning the proposed amendment.
33 If the governing board will conduct a subsequent public hearing, notice of
34 the planning and zoning commission recommendation shall be included in the
35 notice of public hearing provided by the governing board. A record of the
36 hearings, findings made, and actions taken by the commission shall be main-
37 tained by the city or county.

38 (b) The governing board, as provided by local ordinance, prior to adop-
39 tion, amendment, or repeal of the plan, may conduct at least one (1) public
40 hearing, in addition to the public hearing(s) conducted by the commission,
41 using the same notice and hearing procedures as the commission. The govern-
42 ing board shall not hold a public hearing, give notice of a proposed hearing,
43 nor take action upon the plan, amendments, or repeal until recommendations
44 have been received from the commission. Following consideration by the gov-
45 erning board, if the governing board makes a material change in the recommen-
46 dation or alternative options contained in the recommendation by the commis-
47 sion concerning adoption, amendment or repeal of a plan, further notice and
48 hearing shall be provided before the governing board adopts, amends or re-
49 peals the plan.

1 (c) No plan shall be effective unless adopted by resolution by the gov-
2 erning board. A resolution enacting or amending a plan or part of a plan
3 may be adopted, amended, or repealed by definitive reference to the specific
4 plan document. A copy of the adopted or amended plan shall accompany each
5 adopting resolution and shall be kept on file with the city clerk or county
6 clerk.

7 (d) Any person may petition the commission or, in absence of a com-
8 mission, the governing board, for a plan amendment at any time, unless the
9 governing board has established by resolution a minimum interval between
10 consideration of requests to amend, which interval shall not exceed six (6)
11 months. The commission may recommend amendments to the comprehensive plan
12 and to other ordinances authorized by this chapter to the governing board at
13 any time.

14 SECTION 5. That Section 67-6512, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part
17 of a zoning ordinance each governing board may provide by ordinance adopted,
18 amended, or repealed in accordance with the notice and hearing procedures
19 provided under section 67-6509, Idaho Code, for the processing of appli-
20 cations for special or conditional use permits. A special use permit may
21 be granted to an applicant if the proposed use is conditionally permitted
22 by the terms of the ordinance, subject to conditions pursuant to specific
23 provisions of the ordinance, subject to the ability of political subdivi-
24 sions, including school districts, to provide services for the proposed
25 use, and when it is not in conflict with the plan. Denial of a special use
26 permit or approval of a special use permit with conditions unacceptable to
27 the landowner may be subject to the regulatory taking analysis provided for
28 by section 67-8003, Idaho Code, consistent with requirements established
29 thereby.

30 (b) Prior to granting a special use permit, at least one (1) public
31 hearing in which interested persons shall have an opportunity to be heard
32 shall be held. At least fifteen (15) days prior to the hearing, notice of
33 the time and place, and a summary of the proposal shall be published in the
34 official newspaper or paper of general circulation within the jurisdiction.
35 Each local government is encouraged to post such notice on its official
36 websites, if one is maintained. Notice may also be made available to other
37 newspapers, radio and television stations serving the jurisdiction for use
38 as a public service announcement. Notice shall be posted on the premises not
39 less than one (1) week prior to the hearing. Notwithstanding jurisdictional
40 boundaries, notice shall also be provided to property owners or purchasers
41 of record within the land being considered, three hundred (300) feet of the
42 external boundaries of the land being considered, and any additional area
43 that may be substantially impacted by the proposed special use as determined
44 by the commission, provided that in all cases notice shall be provided indi-
45 vidually by mail to property owners or purchasers of record within the land
46 being considered and within three hundred (300) feet of the external bound-
47 aries of the land being considered and provided further that where a special
48 use permit is requested by reason of height allowance that notice shall be
49 provided individually by mail to property owners or purchasers of record

within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Requiring more restrictive standards than those generally required in an ordinance;
- (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects and any aviation hazard as defined in section 21-501(2), Idaho Code, of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section.

SECTION 6. That Section 67-6515A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6515A. TRANSFER OF DEVELOPMENT RIGHTS. (1) Any city or county governing body may, by ordinance and following notice and hearing procedures

1 provided for under section 67-6509, Idaho Code, create development rights
2 and establish procedures authorizing landowners to voluntarily transfer
3 said development rights subject to:

4 (a) Such conditions as the governing body shall determine to ful-
5 fill the goals of the city or county to preserve open space, protect
6 wildlife habitat and critical areas, ~~and~~ enhance and maintain the rural
7 character of lands with contiguity to agricultural lands suitable for
8 long-range farming and ranching operations and avoid creation of avia-
9 tion hazards as defined in section 21-501(2), Idaho Code; and

10 (b) Voluntary acceptance by the landowner of the development rights and
11 any land use restrictions conditional to such acceptance.

12 (2) Before designating sending areas and receiving areas, a city or
13 county shall conduct an analysis of the market in an attempt to assure that
14 areas designated as receiving areas will have the capacity to accommodate
15 the number of development rights expected to be generated from the sending
16 areas.

17 (3) Ordinances providing for a transfer of development rights shall not
18 require a property owner in a sending area to sell development rights. Once
19 a transfer of development rights has been exercised it shall constitute a re-
20 striction on the development of the property in perpetuity, unless the city
21 or county elects to extinguish such restriction pursuant to the provisions
22 of this chapter.

23 (4) A city or county may not condition an application for a permit to
24 which an applicant is otherwise entitled under existing zoning and subdivi-
25 sion ordinances on the acquisition of development rights. A city or county
26 may not condition an application for a zoning district boundary change which
27 is consistent with the comprehensive plan on the acquisition of development
28 rights. A city or county may not reduce the density of an existing zone and
29 thereafter require an applicant to acquire development rights as a condition
30 of approving a request for a zoning district boundary change which would per-
31 mit greater density.

32 (5) It shall be at the discretion of the persons selling and buying a
33 transferable development right to determine whether a right will be trans-
34 ferred permanently without being exercised in a designated receiving area or
35 whether a right will have requirements to be exercised within a designated
36 receiving area within a set time period. If the development right is not used
37 before the end of the time period provided by written contract and any exten-
38 sion thereof, the development right will revert to the owner of the property
39 from which it was transferred.

40 (6) No transfer of a development right, as contemplated herein, shall
41 affect the validity or continued right to use any water right that is ap-
42 purtenant to the real property from which such development right is trans-
43 ferred. The transfer of a water right shall remain subject to the provisions
44 of title 42, Idaho Code.

45 (7) (a) Ordinances providing for the transfer of development rights
46 shall prescribe procedures for the issuance and recording of the in-
47 struments necessary to sever development rights from the sending
48 property and to affix the development rights to the receiving property.
49 These instruments shall specifically describe the property, shall be
50 executed by all lienholders and other parties with an interest of record

1 in any of the affected property, and shall be recorded with the county
 2 recorder. Transfers of development rights without such written and
 3 recorded consent shall be void.

4 (b) A development right which is transferred shall be deemed to be an
 5 interest in real property and the rights evidenced thereby shall inure
 6 to the benefit of the transferee, his heirs, successors and assigns.
 7 An unexercised development right shall not be taxed as real or personal
 8 property.

9 (8) For the purposes of this section:

10 (a) "Development rights" shall mean the rights permitted to a lot, par-
 11 cel or area of land under a zoning or other ordinance respecting permis-
 12 sible use, area, density, bulk or height of improvements. Development
 13 rights may be calculated and allocated in accordance with such factors
 14 as area, floor area, floor area ratios, density, height limitations, or
 15 any other criteria that will effectively quantify a value for the devel-
 16 opment right in a reasonable and uniform manner that will carry out the
 17 objectives of this section.

18 (b) "Receiving area" shall mean one (1) or more designated areas of land
 19 to which development rights generated from one (1) or more sending areas
 20 may be transferred and in which increased development is permitted to
 21 occur by reason of such transfer.

22 (c) "Sending area" shall mean one (1) or more designated areas of land
 23 in which development rights may be designated for use in one (1) or more
 24 receiving areas.

25 (d) "Transfer of development rights" shall mean the process by which
 26 development rights are transferred from one (1) lot, parcel or area of
 27 land in any sending area to another lot, parcel or area of land in one (1)
 28 or more receiving areas.

29 SECTION 7. That Section 67-6516, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEAR-
 32 ING. Each governing board shall provide, as part of the zoning ordinance,
 33 for the processing of applications for variance permits. A variance is a
 34 modification of the bulk and placement requirements of the ordinance as
 35 to lot size, lot coverage, width, depth, front yard, side yard, rear yard,
 36 setbacks, parking space, height of buildings, or other ordinance provision
 37 affecting the size or shape of a structure or the placement of the structure
 38 upon lots, or the size of lots. A variance shall not be considered a right or
 39 special privilege, but may be granted to an applicant only upon a showing of
 40 undue hardship because of characteristics of the site and that the variance
 41 is not in conflict with the public interest. Prior to granting a variance,
 42 notice and an opportunity to be heard shall be provided to property owners
 43 adjoining the parcel under consideration and the manager or person in charge
 44 of the local airport if the variance could create an aviation hazard as de-
 45 fined in section 21-501, Idaho Code. Denial of a variance permit or approval
 46 of a variance permit with conditions unacceptable to the landowner may be
 47 subject to the regulatory taking analysis provided for by section 67-8003,
 48 Idaho Code, consistent with the requirements established thereby.